

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1545 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1-5 No

SHARDABEN HASMUKHLAL SHAH

Versus

SAVITABEN KANTILAL

Appearance:

MR VC DESAI for Petitioners

MR GM JOSHI for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 01/04/98

ORAL JUDGEMENT

This revision application under Section 115 of C.P.C. is directed against the order dated 16.1.1995 whereby the learned judge had rejected the petitioner's application Exh. 40 dated 29.10.1993 for condonation of delay and application Exh. 42 for setting aside the abatement and bringing the legal heirs of Sitaben on record. In Civil Suit No. 6204 of 1986 the plaintiff Sitaben died on 23.9.1992. It is stated that the

application for bringing her legal representatives was filed in April 1993. It is stated that the said application could not be traced and therefore fresh applications Exh. 40 and 42 were filed on 29.10.1993. Therefore, according to the petitioners there is only a delay of three months and fifteen days. An application was filed in April 1993 but because of the mistake of the office of the court the same was not placed before the court. However, according to the respondents there was no such application and in fact an application was filed only in October 1993 and therefore, there was a delay of about ten months. The learned judge found that there was no explanation with respect to delay of six months i.e. from April to October 1993.

It is contended by Mr. Desai learned counsel for the petitioner that the trial court has found sufficient ground for the period upto April 1993. So far as the period April to October 1993 is concerned, there is a positive statement that an application was filed. In my view there is no reason to disbelieve such a statement. The possibility of misplacing of such application cannot be ruled out. In view of this, the trial court ought to have taken a liberal view of the matter. It is also brought to my notice in another suit No. 306 of 1989 between the same parties legal representatives of the deceased Sitaben have been taken on record.

Mr. Joshi appearing for the respondent has vigorously contested the petition. He submits that there is no reason to believe that application was filed in April 1993 and therefore apparently there is delay of six months which has not been explained.

In my view there is no substance in the contention raised by Mr. Joshi considering the fact that there is a positive statement that an application was filed in April 1993 and the same could not be traced and further fact that the legal representatives of the deceased Sitaben have been brought on record in another suit referred to above. In my view, therefore, the learned judge has committed an error of jurisdiction in not condoning the delay for the period April to October 1993. In view of the aforesaid, the revision application is allowed and the impugned order dated 16.1.1995 passed by the City Civil Judge, Ahmedabad, is quashed and set aside. The applications Exh. 40 and 42 are granted. The petitioners may carry out necessary amendment. Rule is made absolute.

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